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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 935

FORREST VILLAGE, INC., *Petitioner,*

v.

THE UNITED STATES, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	3
Statutes Involved	4
FHA Regulations Involved	5
Statement	6
Reasons for Granting the Writ	7
Conclusion	17
Appendix	1a

CITATIONS

CASES:

Accardi v. Shaughnessy, 347 U.S. 260, 266, 268 ..... 8, 11
Betts v. U. S., 145 Ct. Cl. 530, 535 17
Burlington Transportation Co. v. Iowa State Commerce Commission, 230 Iowa 570, 298 N.W. 631, 635 9
Camellia Apts., Inc., et al. v. U. S., 167 Ct. Cl. No. 224; 334 F. 2d 667 ..... 7, 12, 15, 17
Clapp v. U. S., 127 Ct. Cl. 505, 117 F. Supp. 576, cert. den. 348 U.S. 834 (1954) 6
Crosley Corp. v. Westinghouse, 130 F. 2d 474, 475 17
FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 143.. 14
Federal Radio Commission v. Nelson Bros., 289 U.S. 266 ..... 11, 17
Glenn v. Mitchell, 71 Colo. 394, 207 P. 84 8
Gooch Milling & Elevator Co. v. Commissioner of Internal Revenue, 133 F. 2d 131 ..... 8, 9, 10
Joint Anti-Fascist League v. McGrath, 341 U.S. 123 .. 17
Puget Sound Power & Light Co. v. Public Utility District No. 1, 123 F. 2d 286 ..... 8, 10, 17

Page

Schechter Poultry Corporation v. United States, 295 U.S. 495 ..... 13, 14
Service v. Dulles, 354 U.S. 363 11
SEC v. Chenery Corporation, 318 U.S. 80, 89 9
State v. Public Service Commission, 145 T. 215, 218 ... 8
Taylor v. School District, 128 Neb. 437, 259 N.W. 168, 169 9
Tracy v. McIntyre, 29 Calif. App. 2d 145; 84 P. 2d 526.. 8
United States v. 11,360 Acres of Land, etc., 62 F. Supp. 968, 970 9
United States v. Realty Co., 163 U.S. 427 15
Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 15

STATUTES:

5 U.S.C. 1001 ..... 2, 4
12 U.S.C. 1738(c) 4
12 U.S.C. 1742 4
12 U.S.C. 1743 6
28 U.S.C. 1255 2

CONSTITUTIONAL PROVISIONS:

U. S. Constitution, Article II, Section 1 5
U. S. Constitution, Article II, Section 3 5
U. S. Constitution, Amendment 5 5

FHA REGULATIONS:

Section 603(c) of the National Housing Act, as amended 2
Section 607 of the National Housing Act, as amended.. 2, 4
Section 608 of the National Housing Act 6

RULE:

U. S. Supreme Court, Rule 19 2

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Carl L. Shipley, attorney for Forrest Village, Inc., petitioner herein, respectfully requests in its behalf that the Supreme Court of the United States grant this petition for a writ of certiorari to review the decision of the United States Court of Claims in the above entitled case.

OPINION DELIVERED IN THE COURT BELOW TO BE REVIEWED

The opinion delivered in the United States Court of Claims is No. 112-64, decided October 29, 1965, and is set out *infra* in the appendix hereto at page 1(a).

JURISDICTION

As grounds on which to invoke jurisdiction of this Court, petitioner relies upon Title 28 U.S. Code Section 1255, and alleges and verily believes that the special and important reasons justifying a grant of review on writ of certiorari in the sound judicial discretion of this Court within the meaning of Rule 19 are:

1. The opinion of the court below decides an important question of federal law which has not been, but should be, settled by this Court, to wit, whether a regulation promulgated by the Federal Housing Administration not in accordance with the Administrative Procedure Act (5 U.S.C. 1001 *et seq.*) but purporting to be an exercise of discretion in determining the amount of adjusted premium charges authorized by Sections 603(c) and 607 of the National Housing Act, as amended, as a penalty upon the prepayment of mortgages insured by the FHA, is valid.

2. A second important question of federal law which has not been, but should be, settled by this Court, is, to wit, whether the FHA was arbitrary in not crediting petitioner with 15% of the 1% of the original face amount of an FHA-insured mortgage exacted as a prepayment penalty, when the FHA's own regulation provided:

> "No adjusted premium charge shall be due FHA in the following cases: * * *
>
> (b) Where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made to the mortgagor which do not exceed in any one calendar year 15% of the original face amount of the mortgage."

3. A third important question of federal law decided by the court below which has not been, but should

be, settled by this Court, is, to wit, whether the Federal Housing Administration exceeded its statutory authority in promulgating a rule of general applicability establishing a 1% prepayment penalty in the event the principal obligation of any mortgage accepted for insurance under the National Housing Act is paid in full prior to the maturity date, where the statute authorizes the FHA Commissioner

> "'in his discretion to require the payment by the mortgagee of an adjusted premium charge in such amount as the Administrator determines to be equitable."

QUESTIONS PRESENTED FOR REVIEW

1. Was it arbitrary, a denial of due process and a taking without compensation for the FHA to require petitioner to pay an adjusted premium or prepayment penalty of 1% of the original face amount of an FHA-insured mortgage upon refinancing, without at very least a 15% credit, where the FHA's regulations permit prepayment of 15% in any one year without penalty?

2. Is an FHA regulation purporting to establish a 1% prepayment penalty without following the procedures of the Administrative Procedure Act an unconstitutional denial of due process?

3. Is it a denial of due process for the FHA to promulgate a rule of general applicability fixing a 1% prepayment penalty in the event that the principal obligation of any mortgage accepted for insurance under the National Housing Act is paid in full prior to its maturity, where the FHA Commissioner is

> "authorized in his discretion to require the payment by the mortgagee of an adjusted premium charge in such amount as the Commissioner determines to be equitable"